

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEBA GRAZETTE,

:

Plaintiff,

:

11 Civ. 8007 (LTS) (HBP)

-against-

:

REPORT AND
RECOMMENDATION

URBAN RESOURCE INSTITUTE,

:

Defendant.

:

-----X

PITMAN, United States Magistrate Judge:

TO THE HONORABLE LAURA TAYLOR SWAIN, United States
District Judge,

On March 21, 2013, plaintiff wrote to me, stating that she wished to discontinue this action and to litigate her claims in state court. Because defendant had previously answered and plaintiff could no longer unilaterally withdraw her claims, I issued an Order on March 26, 2013 annexing plaintiff's March 21 letter and directing defendant to advise me whether it objected to the discontinuance of this matter without prejudice. I received defendant's response to my Order yesterday in which it states that defendant "take[s] no position and leave[s] the decision to the sound discretion of the Court." Defendant's letter is annexed hereto.

In view of plaintiff's expressed preference to litigate her claims in state court, the strong policy in this Circuit in favor of resolving claims on the merits and the lack of any opposition from defendant to the discontinuance of this action without prejudice, I respectfully recommend that the matter be dismissed without prejudice pursuant to Fed.R.Civ.P. 41(a)(2).


OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c)) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from receipt of this Report to file written objections. See also Fed. R. Civ. P. 6(a). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable Laura Taylor Swain, United States District Judge, 500 Pearl Street, Room 755, and to the Chambers of the undersigned, 500 Pearl Street, Room 750, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Swain. FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140, 155 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank

v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-238 (2d Cir. 1983).

Dated: New York, New York
April 9, 2013

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

Copies mailed to:

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Richard L. Steer, Esq.
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April 8, 2013

VIA FACSIMILE (212) 805-6111

Hon. Henry Pitman
United States Magistrate Judge
United States District Court
Southern District New York
500 Pearl Street
New York, New York 10007

RE: *Keba Grazette v. Urban Resource Institute*
Case No. 11-cv-8007 (LTS)(HBP)

Dear Judge Pitman:

We represent defendant Urban Resource Institute ("Defendant") in the above-referenced action, commenced by plaintiff *pro se*, Keba Grazette ("Plaintiff"). We write in response to Your Honor's Order, dated March 26, 2013, requesting that we advise Your Honor in writing whether Defendant consents to the dismissal of this action without prejudice. Given that Plaintiff is proceeding *pro se*, we take no position and leave the decision to the sound discretion of the Court.

Respectfully submitted,

TARTER KRINSKY & DROGIN LLP
Attorneys for Defendant

By: 
Richard L. Steer (RS-0300)

cc: Keba Grazette (via hand-delivery)
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